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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)
)
Equal Access and Interconnection) CC Docket No. 94-54
Obligations Pertaining to) RM-8012
Commercial Mobile Radio Services)

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF MISCELLCO COMMUNICATIONS, INC.

Miscellco Communications, Inc. ("Miscellco")^{1/} by its attorneys and pursuant to Section 1.415 of the Commission's rules, respectfully submits its comments in response to the Commission's Notice of Proposed Rulemaking and Notice of Inquiry ("NPRM")^{2/} in the captioned proceeding.

I. INTRODUCTORY STATEMENT AND OVERVIEW

In its NPRM, the Commission seeks comment on its proposals to 1) impose equal access obligations upon all commercial mobile radio service ("CMRS") providers; 2) consider rules to govern requirements for interconnection service provided by local exchange carriers ("LECS") to CMRS providers; and 3) to require CMRS providers to interconnect with each other. By these comments,

^{1/} Miscellco is the non-wireline cellular licensee in six Kansas RSAs and holds interim operating authority in two adjacent markets. Accordingly, Miscellco submits that it is well positioned to provide the Commission with informed comment in this proceeding.

^{2/} See, NPRM in CC Docket No. 94-54, FCC 94-145 (released July 1, 1994) where, the Commission requested that comments be filed by August 30, 1994, and that Reply Comments be filed by September 29, 1994. Pursuant to the Commission's Order, DA 94-877 (released August 11, 1994), the deadlines for filing comments and reply comments in this matter were extended to September 12, 1994 and October 13, 1994, respectively. Accordingly, these comments are timely filed.

Miscellco only addresses certain issues raised by the Commission in its NPRM with respect to the imposition of equal access obligations on cellular providers.

In particular, Miscellco strongly opposes any extension of equal access obligations to cellular providers which are currently not under any obligation to provide equal access.^{3/} Miscellco is a relatively small cellular provider which operates a regional cellular system in the State of Kansas and the Commission's proposal to impose equal access obligations on all cellular providers would have a direct and substantial adverse impact on Miscellco's ability to provide its customers with reasonably priced cellular service. The Commission must reexamine its tentative conclusion that cellular providers should be subjected to equal access obligations in light of the harm caused to small and medium sized cellular providers and the resulting disservice to the public interest. There are no historical or other public policy justifications for imposing equal access upon cellular providers and the cost to provide equal access will be prohibitive not only for the cellular provider but for the consumer as well.

For the reasons set forth below, Miscellco submits that the public interest would be served by the Commission's refusal to adopt its proposal to impose equal access on cellular providers. In support, the following is shown:

^{3/} Presently, Bell Operating Company ("BOC") affiliates must provide equal access but other cellular licensees and CMRS providers, who are not subject to the MFJ, are not obliged to do so.

I. IMPOSITION OF EQUAL ACCESS OBLIGATIONS UPON CELLULAR PROVIDERS LACKS ANY HISTORICAL OR PUBLIC POLICY JUSTIFICATION

As set forth in the NPRM, the equal access obligations borne by the cellular affiliates of the BOCs grew out of the Bell System divestiture decree ("Modification of Final Judgement" or "MFJ").^{4/} See NPRM at Paragraph 6. The MFJ requires the BOCs to offer access to the local exchange network to all interexchange carriers ("IXCs") that is equal in "type, quality and price" to that offered to AT&T and its affiliates. The equal access obligations were imposed upon the BOCs as a result of their control over "bottleneck" facilities which prevented customer access to the long distance service of their choice and IXC access to potential customers. These equal access obligations were subsequently extended to BOC-affiliated cellular operations to prevent BOCs from circumventing the MFJ prohibition against BOC provision of interexchange service.^{5/}

The MFJ is a consent decree voluntarily entered into by the Department of Justice and AT&T and designed to address specific problems of past anti-competitive behavior in the long distance market resulting from the LECs control of bottleneck facilities. Smaller non-BOC cellular operators such as Miscellco, simply do not possess the financial resources, historical nexus to AT&T or market power which would warrant the imposition of equal access

^{4/} United States v. AT&T, 552 F. Supp. 131, (D.D.C. 1982), aff'd mem. sub nom. Maryland v. U.S., 460 U.S. 1001 (1983) ("MFJ").

^{5/} See United States v. Western Elec. Co., 797 F. 2d 1082, 1086 (D.C. Cir. 1986)..

obligations. In no way can Miscellco or any other independent cellular providers be classified as similarly situated to BOC affiliated cellular providers. Accordingly, no justification exists for the imposition of equal access obligations on non-BOC affiliated cellular providers who have no direct control over local exchange facilities, nor are affiliated with entities that control local exchange facilities.^{6/}

III. THE COST TO PROVIDE EQUAL ACCESS IS PROHIBITIVE AND WOULD SIGNIFICANTLY OUTWEIGH ANY SUPPOSED CONSUMER BENEFITS

The Commission notes in its NPRM that its requirement that cellular providers offer equal access may result in at least four potential benefits.^{7/} However, Miscellco submits that none of these benefits readily appear to provide benefits for cellular providers and any direct benefits to be possibly realized by the consumer will be far outweighed by the costs that not only they would have to pay but the cellular providers would pay as well.^{8/}

^{6/} Indeed, Miscellco would also note that three of the five Commissioners also have serious reservations about the rationale or wisdom of imposing equal access obligations. See Separate Statements of Commissioner James H. Quello, Commissioner Andrew C. Barrett, and Commissioner Rachelle B. Chong appended to the NPRM.

^{7/} See, NPRM at Paragraph 36. These potential benefits include 1) increased consumer choice and possible lowering of long distance services; 2) increased access of end users to networks; 3) enhanced IXC service offerings; and 4) maintaining consistency with the principle of regulatory parity.

^{8/} Miscellco strongly disputes MCI's contention that if equal access were uniformly available, the chief beneficiaries would be the cellular carriers and their customers, because equal access would generate additional cellular call volume and, in particular, more land to mobile traffic. See NPRM at

The costs of implementing equal access include the administrative expenses of conducting a program of presubscription and consumer education, billing upgrades and the more significant expense of converting existing (or purchasing new) switches and switching software to allow for customer choice of IXCs. With estimates ranging from \$50,000 to \$100,000 to implement and maintain IXC software per switch, the total financial burdens of implementing equal access can be quite significant.

Miscellco is a small independent cellular provider with less than 50 employees. Miscellco's service territory is over 45,000 square miles yet the population in this service area is only 320,000. Miscellco has attempted to provide the most complete cellular coverage for its market by investing the large amounts of capital necessary to construct a wide area system while only receiving minimal return on its investment due to the sparse population. In order to provide equal access for its subscribers, Miscellco would have to upgrade at least five switches at a significant cost and would have to contend with the other expenses associated with equal access. Miscellco simply would not be able to absorb the expenses for the implementation of equal access and continue to operate a viable cellular system.^{2/}

Most small to medium size cellular operators such as Miscellco

Paragraph 19.

^{2/} The Commission has recognized that the costs of implementing equal access may be so high that it could force some smaller carriers out of the market. See, NPRM at Paragraph 34.

are not engaged in the provision of other services and lack other sources of revenue which could be used to subsidize the cost of implementing and maintaining IXC access. Competition will not be increased by the reduction in the number of cellular providers which most likely will occur if small and medium sized cellular providers are forced to incorporate equal access.

Currently, Miscellco provides a wide area local calling plan which allows its customers to place a call to any location in the state without an additional long distance charge. Also, due to bulk discounts it receives from its long distance provider, Miscellco provides reasonable interstate long distance rates for its subscribers.^{10/} If cellular service providers are forced to disaggregate "long distance" calls within their wide area plans, consumers will end up paying additional IXC charges plus air time, resulting in higher overall charges.^{11/} Miscellco would have no alternative but to curtail its service offerings or increase the rates it charges its customers, if it is forced to offer equal access. Neither of these alternatives would serve the public interest.

^{10/} Indeed, Miscellco is in the process of negotiating a new interstate long distance service agreement which will provide even further discounted long distance rates for its subscribers.

^{11/} Equal access obligations would cause disruptions in local service areas as customer are no longer allowed to make toll-free calls and cellular providers may be disinclined to expand local service areas based on consumer demand if they incur extra interexchange carrier charges.

**IV. THE INCREASED REGULATORY BURDENS OF EQUAL ACCESS OBLIGATIONS
WILL HINDER THE GROWTH OF THE CELLULAR INDUSTRY**

The Commission has determined that the CMRS market is competitive.^{12/} Competition should dictate the provision of services not increased regulatory burdens. Equal access will discourage investments in seamless wide-area systems, create disincentives for further improvements, and hamper cellular operators' ability to compete against other wireless service providers to meet end-to-end communications needs of the mobile users. In keeping with recent pronouncements surrounding the Administration's and the Commission's commitment to infrastructure buildout and streamlined regulation, the FCC should give the cellular carriers the maximum marketplace flexibility to adapt and upgrade their networks to meet emerging wireless competition.

In fact, such increased regulation seems to contradict what the Commission determined to be one of Congress' objectives in amending Section 332 of the Communications Act: imposing "a reasonable level of regulation for CMRS providers, and to avoid unwarranted regulatory burdens for any mobile radio licensees classified as CMRS providers." See, NPRM at Paragraph 2. The Commission itself states as one of its goals in the CMRS Second Report to establish a regulatory structure that will foster competition while promoting the "efficient provision of service to consumers at reasonable prices." See, NPRM at Paragraph 31. The Commission may cause the defeat of its own goals by the imposition

^{12/} See, CMRS Second Report, 9 FCC Rcd at 1467-1468.

of equal access obligations on CMRS.

**V. IMPOSITION OF EQUAL ACCESS WILL NOT RESULT IN ANY DESIRED
BENEFITS TO CONSUMERS**

Customer choice of long distance services is the most realistic public interest benefit to be obtained by the implementation of equal access for all cellular service.^{13/} The Commission fails to provide adequate support or evidence that consumers desire equal access. In fact, as the Commission notes, some commenting parties to the MCI Petition, point out that "customers are more concerned with cellular service features, including coverage area, the ability to roam on other systems, high quality signal, and a reasonable total monthly bill." See NPRM at Paragraph 25. Miscellco's customers subscribe to its service in order to obtain the various mobile services and plans which Miscellco offers not to choose a long distance company which a customer might use only occasionally.

Instead of passing on savings to the consumer, the ultimate effect of imposing equal access on cellular providers will be not only to increase costs to consumers in the long-run, but to enrich large IXCs like AT&T, MCI and Sprint. Cellular providers should not be made to suffer for the benefit of IXCs. The public interest would best be served by allowing the small and medium cellular providers the leeway to provide their customers with the best service possible at the least cost and let the marketplace

^{13/} Miscellco also notes that users can reach their interexchange carriers of choice through the use of 800 and 950 numbers, as well as 10XXX, all without the need of equal access requirements.

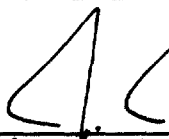
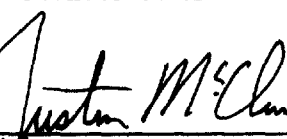
determine the need for equal access.

VI. Conclusion

Miscellco commends the Commission for attempting to provide the consumer with choices; however, as Miscellco has demonstrated above, more harm than good will result from the Commission's proposal to extend equal access obligations. The costs for implementing equal access greatly outweigh any potential benefits for the consumer. The costs of imposing equal access obligations will create severe financial strain on cellular providers; and possibly put some out of business all together; and will increase the prices charged to consumers. The Commission's proposal to impose equal access obligations on cellular providers should be reexamined with the view toward allowing the competitive marketplace dictate the type and costs of cellular services that consumers desire.

Respectfully submitted,

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